

ADOT/JPA File No.: 06-137
AG Contract No.: KR07-0118 TRN
Project Multi-Use Pathway &
Landscaping
Section: Gordon Drive to Bank Street
TRACS No.: SL465 01C
Budget Source Item No.: N/A

INTERGOVERNMENTAL AGREEMENT

BETWEEN
THE STATE OF ARIZONA
AND
MOHAVE COUNTY

THIS AGREEMENT is entered into this date March 20th, 2007, pursuant to the Arizona Revised Statutes § 11-951 through 11-954, as amended, between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION (the "State") and MOHAVE COUNTY, acting by and through its BOARD OF SUPERVISORS (the "County").

I. RECITALS

1. The State is empowered by Arizona Revised Statutes § 28-401 to enter into this Agreement and has delegated to the undersigned the authority to execute this Agreement on behalf of the State.
2. The County is empowered by Arizona Revised Statutes § 11-251 to enter into this Agreement and has by resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this Agreement and has authorized the undersigned to execute this Agreement on behalf of the County.
3. Congress has authorized appropriations for, but not limited to, twelve eligible categories of Transportation Enhancement activities.
4. The County has selected such project within the boundary of the County. The survey of the project has been completed and the plans, estimates and specifications will be prepared and as required, submitted to the State and Federal Highway Administration (FHWA) for its approval.
5. The County, in order to obtain Federal funds for the construction of the project, is willing to provide County funds to match Federal funds in the ratio required or as finally fixed and determined by the County and FHWA, including actual construction engineering (CE) and contingency costs.
6. The interest of the State for this Project is in the acquisition of Federal funds for the use and benefit of the County and is the designated agent for the County. Funds expended for the project, are authorized by reason of Federal Law and regulations.
7. This Agreement is an enhancement project, to construct a multi-use pathway with landscaping from Gordon Drive to Bank Street, hereinafter referred to as the "Project". The State shall be the designated agent and approve the County to self-administer the Project, using Arizona Procurement Procedures. The County shall maintain the pathway and provide electrical power and water required for the irrigation.

NO. 28801
Filed with the Secretary of State
Date Filed: 3-20-07
Janice K. Shivers
Secretary of State
By: [Signature]

Construction Tracs No.: SL465 01C

Capped Federal Aid Funds @ 94.3%	\$500,000.00
Estimated Matching County Funds @ 5.7%	<u>\$ 30,223.00</u>
Estimated Cost of the Project	\$530,223.00

*(Includes contingency, construction engineering administration, and incidentals).

THEREFORE, in consideration of the mutual covenants expressed herein, it is agreed as follows:

II. SCOPE OF WORK

1. The State:

a. Shall submit a program to the Federal Highway Administration (FHWA) containing the above-mentioned Project with the recommendation that it be approved for construction.

b. Shall approve the Project if such project construction funds are available by FHWA and request the maximum authorized Federal funds for the Project including construction engineering and administration costs.

c. Shall hereby authorized the County to advertise for, receive and open bids, enter into contracts(s) with a firm(s) to whom the award is made for the construction of the Project using State of Arizona Procurement Procedures. The Project shall be performed, completed, inspected, accepted and paid for in accordance with the requirements of the Project Plans, Technical Specifications. Special Provisions and Standard Specifications.

d. Shall not be obligated to incur any expenditure on behalf of the County in excess of the amount reference herein. Should costs exceed the maximum Federal funds available, or unforeseen conditions or circumstances increase the cost of said work required by a change in the extent or scope of the work called for in this Agreement, it is understood and agreed that the County will be responsible for any overage.

e. After bid opening and award of the construction contract by the County, make progress payments to the County for the direct actual cost of the Project, plus construction engineering, within 30 days after receipt and approval of an invoice.

f. Not be obligated to maintain said Project, should the County fail to budget or provide for proper and perpetual maintenance as set forth in this Agreement.

2. The County:

a. Shall upon execution of this Agreement designate the State as authorized agent for the County.

b. Shall use State of Arizona Procurement Procedures; advertise for, receive and open bids, enter into contracts(s) with a firm(s) to whom the award is made for the construction of the Project using State of Arizona Procurement Procedures. The Project shall be performed, completed, inspected, accepted and paid for in accordance with the requirements of the Project Plans, Technical Specifications, Special Provisions and Standard Specifications.

c. Shall provide personnel to administer and supervise construction. All construction project change orders are to be copied to the State.

d. Shall be entirely responsible for all costs incurred by the County in performing and accomplishing the work as set forth in this Agreement whether covered by Federal funding or not and is obligated to pay for all cost overruns above the Federal Aid Caps for construction and the lowest bid.

e. Complete the Project in accordance with approved plans and specifications and the requirements of the relevant State and Federal Statutes, Rules or Regulations. In the event the County fails to comply with the plans, specifications or any relevant State or Federal Statutes, Rules or Regulations, the County shall hold the State harmless from any claims or costs incurred by the State as a result of the Countys failure to comply.

f. Shall after the award of the construction contract(s), invoice the State for Federal funds through ADOT progress payments for the direct cost of construction, plus construction engineering and administration, not to exceed the estimated cost of \$500,000.00 in Federal Aid.

g. Be responsible for the on going maintenance and repairs of the pathway. Maintenance shall include but not be limited to: of keeping the sidewalk surface and surrounding areas free of all debris, undesirable weeds, grasses, trash and litter and doing any sidewalk repairs that might be necessary to keep the sidewalk compliant with the Americans with Disabilities Act Accessibility Guidelines.

h. Upon completion of construction, the County shall provide for, at its own cost and as an annual item in its budget, perpetual and proper maintenance of all pathway and landscape improvements. Maintenance of all landscaping shall be in accordance with accepted horticultural practices including but not limited to keeping all areas free of weeds, undesirable grasses and litter, applying irrigation water, furnishing and applying insecticide/herbicide sprays and dust to combat diseases and other pests, pruning, and replanting as required to maintain the landscaping as it was designed and established at the completion of the Project.

i. Be responsible for the furnishing of electrical power and water necessary and to maintain and operate the landscaping and irrigation system including but not limited to all testing, adjustments, and repairs necessary to keep system in proper working order.

III. MISCELLANEOUS PROVISIONS

1. The State assumes no financial obligation or liability under this Agreement. The County assumes full responsibility for the design, plans and specifications, reports, the engineering in connection therewith, and the construction of the improvements contemplated, cost over-runs and construction claims. It is understood and agreed that any damages arising from carrying out, in any respect, the terms of this Agreement or any modification thereof, shall be solely the liability of the County, and that the County hereby agrees to save and hold harmless and indemnify the State from loss of any of its departments, agencies, officers or employees from any and all costs and/or damages incurred by any of the above and from any other damage to any person or property whatsoever, that is caused by any activity, condition or event arising out of the performance, nonperformance or negligent performance of any provisions of this Agreement by the State, any of its departments, agencies, officers and employees; the County, any of its agents, officers and employees, or any of its independent contractors. Costs incurred by the State, any of its departments, agencies, officers or employees shall include any action, court costs, and expenses of litigation or attorneys' fees.

2. The cost of construction and construction engineering work covered by this Agreement is to be borne by FHWA and the County, each in the proportion prescribed or as fixed and determined by FHWA as stipulated in this Agreement. Therefore, the County agrees to furnish and provide the difference between the total cost of the work provided for in this Agreement and the amount of Federal Aid received.

3. The terms, conditions and provisions of this Agreement shall remain in force and effect until completion of said project and related deposits or reimbursement, except any provisions for maintenance,

electrical power and water shall be perpetual. Further, this Agreement may be canceled at any time prior to the award of the project construction contract, upon thirty days (30) written notice to the other party. It is understood and agreed that, in the event the County terminates this Agreement, the State shall in no way be obligated to maintain said Project.

4. This Agreement shall become effective upon filing with the Secretary of State.

5. This Agreement may be cancelled in accordance with Arizona Revised Statutes § 38-511.

6. The provisions of Arizona Revised Statutes § 35-214 are applicable to this Agreement.

7. In the event of any controversy, which may arise out of this Agreement, the parties hereto agree to abide by required arbitration as is set forth for public works contracts in Arizona Revised Statutes § 12-1518.

8. All notices or demands upon any party to this Agreement shall be in writing and shall be delivered in person or sent by mail, addressed as follows:

Arizona Department of Transportation
Joint Project Administration
205 S. 17th Avenue, Mail Drop 616E
Phoenix, Arizona 85007
(602) 712-7525
(602) 712-7424 Fax

Mohave County
Public Works Department
P.O. Box 7000
3675 E. Andy Devine, Ste. C
Kingman, AZ 86402-7000
Phone : (928) 757-0910
Fax : (928) 757-0921

9. This Agreement is subject to all applicable provisions of the Americans with Disability Act (Public Law 101-336, 42 U.S.C. 12101-12213) and all applicable Federal regulations under the Act, including 28 CFR Parts 35 and 36. The parties to this Agreement shall comply with Executive Order Number 99-4 issued by the Governor of the State of Arizona and incorporated herein by reference regarding "Non-Discrimination".

10. Non-Availability of Funds: Every payment obligation of the State and County under this Agreement is conditioned upon the availability of funds appropriated or allocated for the payment of such obligations. If funds are not allocated and available for the continuance of this Agreement, this Agreement may be terminated by the State or County at the end of the period for which the funds are available. No liability shall accrue to the State or County in the event this provision is exercised, and neither the State nor the County shall be obligated or liable for any future payments as a result of termination under this paragraph.

11. In accordance with Arizona Revised Statutes § 11-952 (D) attached hereto and incorporated herein is the written determination of each party's legal counsel and that the parties are authorized under the laws of this State to enter into this Agreement and that the Agreement is in proper form.

IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first above written.

MOHAVE COUNTY

STATE OF ARIZONA

Department of Transportation

By Pete Byers
PETE BYERS
Chairperson-Board of Supervisors 2-20-07

By Sam Maroufkhani
SAM MAROUFKHANI, P.E. 2/27/07
Deputy State Engineer, Development

ATTEST:

By Virlynn Tinnell
VIRLYNN TINNELL
Clerk of the Court



G: 06-137-Mohave County-SL465
Pathway & Landscaping
November 29, 2006 – ly
Revisions December 7, 2006 –ly
Final revision January 25, 2007-ly

MOHAVE COUNTY REQUEST FOR BOARD ACTION FORM

From: Michael P. Hendrix, P.E., Public Works Director

FORMAL ACTION ☐

CONSENT ☐

RESOLUTION ☒

OTHER ☐

INFORMATION ONLY ☐

Date: February 7, 2007

BOS Meeting Date: February 20, 2007

SUMMARIZE THE ISSUE & DESIRED ACTION CLEARLY/ATTACH BACKUP MATERIAL:

Mohave County desires to enter into an Intergovernmental Agreement with the State of Arizona for an enhancement project to construct a multi-use pathway with landscaping from Gordon Drive to Bank Street, which defines project development responsibilities specific to administration, procurement, and payment in addition to pathway maintenance and irrigation-based electrical power and water responsibilities. Further, Mohave County desires to provide Flood Control District funds to match Federal Aid funds, obtained through a Federal Transportation Enhancement grant capped in the amount of \$500,000.00 of actual construction engineering and contingency costs, in the amount of 5.7% (maximum \$30,223.00) of authorized Federal Aid funds, and Mohave County is obligated to pay for all project construction cost overruns above the Federal Aid cap of \$500,000.00 for construction and the lowest bid, which may occur and require additional Flood Control District funds given the preliminary Engineer's Cost Estimate for project construction totals approximately \$700,000.00. Arizona Revised Statutes § 11-251 empower Mohave County to enter into this agreement.

Recommended Motion: Move to adopt BOS Resolution 2007-110 approving the Intergovernmental Agreement between Mohave County and the State of Arizona pertaining to an enhancement project to construct a multi-use pathway with landscaping from Gordon Drive to Bank Street for the purpose of defining project development responsibilities specific to administration, procurement, and payment in addition to pathway maintenance and irrigation-based electrical power and water responsibilities; approving use of Flood Control District funds to match Federal Aid funds, obtained through a Federal Transportation Enhancement grant capped in the amount of \$500,000.00 of actual construction engineering and contingency costs, in the amount of 5.7% (maximum \$30,223.00) of authorized Federal Aid funds; approving use of Flood Control District funds to pay for all project construction cost overruns above the Federal Aid cap of \$500,000.00 for construction and the lowest bid, which may occur given the preliminary Engineer's Cost Estimate for project construction totals approximately \$700,000.00; and further move to approve recording in the official records of the Mohave County Recorder's Office BOS Resolution 2007-110 upon its being signed by the Board Chairman and Clerk.

County Attorney [Signature] Personnel ☐ Reviewed and Approved By: Finance ☐ County Manager [Signature]

Approved as Requested ☒ Board Action Taken: No Action Taken ☐ Disapproved ☐
Continued to X ☐ Approved with the following changes:

Acknowledged receipt and referred to _____

Filing Information and Retrieval

Filed Bid _____
✓ BOS Resolution 2007-110
Filed Petition _____
Filed Land Sold _____
Filed Franchise _____
Filed Improvement District _____

✓ Filed Agreement 2837
Filed Yearly Correspondence _____
Filed Dedication _____
Filed Land Acquired _____
I.D. Resolution _____
Filed Other _____

RECEIVED

FEB 22 2007

M. C. PUBLIC WORKS

Date Routed: FEB 21 2007

XC:

You are reminded that items for the agenda, along with complete backup, must be in the County Manager's Office 10 days prior to Board Meeting.

Additional Information: Returning three
9 A's and three
certified copies of res.

Please return and 9A
once signed by the State

Item No. 10

When recorded, return to
Clerk of the Board
Mohave County Board of Supervisors
P. O. Box 7000
Kingman, Arizona 86402-7000
(928) 753-0729

MOHAVE COUNTY BOARD OF SUPERVISORS RESOLUTION NO. 2007- 110

A RESOLUTION APPROVING AN INTERGOVERNMENTAL AGREEMENT BETWEEN MOHAVE COUNTY AND THE STATE OF ARIZONA PERTAINING TO AN ENHANCEMENT PROJECT TO CONSTRUCT A MULTI-USE PATHWAY WITH LANDSCAPING FROM GORDON DRIVE TO BANK STREET FOR THE PURPOSE OF DEFINING PROJECT DEVELOPMENT RESPONSIBILITIES SPECIFIC TO ADMINISTRATION, PROCUREMENT, AND PAYMENT IN ADDITION TO PATHWAY MAINTENANCE AND IRRIGATION-BASED ELECTRICAL POWER AND WATER RESPONSIBILITIES.

WHEREAS, the Board of Supervisors of Mohave County met in regular session on February 20, 2007; and

WHEREAS, Mohave County desires to enter into an Intergovernmental Agreement with the State of Arizona for an enhancement project to construct a multi-use pathway with landscaping from Gordon Drive to Bank Street, which defines project development responsibilities specific to administration, procurement, and payment in addition to pathway maintenance and irrigation-based electrical power and water responsibilities; and

WHEREAS, Mohave County desires to provide Flood Control District funds to match Federal Aid funds, obtained through a Federal Transportation Enhancement grant capped in the amount of \$500,000.00 of actual construction engineering and contingency costs, in the amount of 5.7% (maximum \$30,223.00) of authorized Federal Aid funds; and

WHEREAS, Mohave County is obligated to pay for all project construction cost overruns above the Federal Aid cap of \$500,000.00 for construction and the lowest bid, which may occur and require additional Flood Control District funds given the preliminary Engineer's Cost Estimate for project construction totals approximately \$700,000.00; and

WHEREAS, Mohave County is empowered to enter into this agreement by virtue of provisions of Arizona Revised Statutes § 11-251, and the State of Arizona is empowered to enter into this agreement by virtue of the provisions of Arizona Revised Statutes § 28-401; and

NOW, THEREFORE BE IT RESOLVED that the Mohave County Board of Supervisors hereby approves the Intergovernmental Agreement between Mohave County and the State of

Arizona, and hereby authorizes the Chairman to enter into and execute said agreement on behalf of the County.

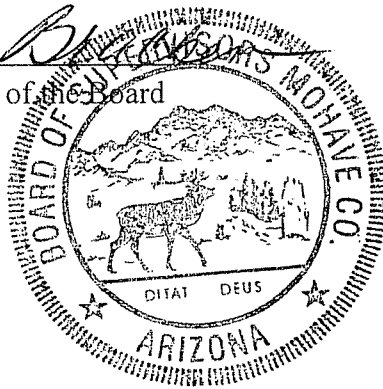
PASSED, APPROVED, AND ADOPTED by the Mohave County Board of Supervisors on February 20, 2007.

MOHAVE COUNTY BOARD OF SUPERVISORS

Pete Byers
Pete Byers, Chairman

ATTEST:

Barbara Bracken
Barbara Bracken, Clerk of the Board



CERTIFICATION

THE FOREGOING IS A FULL, TRUE AND CORRECT
COPY OF THE ORIGINAL ON FILE WITH THE
CLERK OF THE BOARD OF SUPERVISORS,
MOHAVE COUNTY, ARIZONA.

DATED: 2-20-07

ATTEST: Barbara Bracken

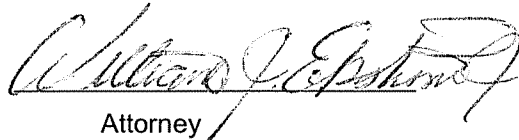
TITLE: Clerk of the Board


ATTORNEY APPROVAL FORM
FOR THE MOHAVE COUNTY

I have reviewed the above referenced Intergovernmental Agreement between the State of Arizona, acting by and through its DEPARTMENT OF TRANSPORTATION, and the COUNTY, an Agreement among public agencies which, has been reviewed pursuant to A.R.S. § 11-951 through § 11-954 and declare this Agreement to be in proper form and within the powers and authority granted to the County under the laws of the State of Arizona.

No opinion is expressed as to the authority of the State to enter into this Agreement.

DATED this 2nd day of February, 2007.


Attorney

<p>TERRY GODDARD Attorney General</p>	 <p>OFFICE OF THE ATTORNEY GENERAL STATE OF ARIZONA</p>	<p>CIVIL DIVISION TRANSPORTATION SECTION Writer's Direct Line: 602.542.8855 Facsimile: 602.542.3646 E-mail: Susan.Davis@azag.gov</p>
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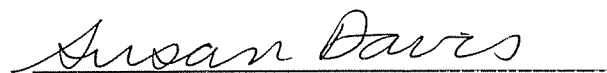
INTERGOVERNMENTAL AGREEMENT
DETERMINATION

A.G. Contract No. KR07-0118TRN (JPA 06-137), an Agreement between public agencies, i.e., The State of Arizona and Mohave County, has been reviewed pursuant to A.R.S. § 11-952, as amended, by the Undersigned Assistant Attorney General who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona.

No opinion is expressed as to the authority of the remaining Parties, other than the State or its agencies, to enter into said Agreement.

DATED: March 7, 2007

TERRY GODDARD
Attorney General


 SUSAN E. DAVIS
 Assistant Attorney General
 Transportation Section

SED:mjf:1003000
Attachment